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JAMES J. KASTER, Chairman

MARY SCOTT NABERS, Commissioner
Representing Employers

CHARLES E. HADDOCK, Commissioner
Representing Labor

WILLIAM GROSSENBACHER
Administrator

TEXAS EMPLOYMENT COMMISSION

Austin, Texas 78778



June 19, 1992

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
Austin, Texas 78711

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Opinion Committee
RQ-440

RE: Request for Attorney General's Opinion Concerning
Provisions of Article 5155 V.A.T.S. (Payday Law)

Dear General Morales:

The Texas Employment Commission respectfully requests your opinion with regard to the following questions:

1. "Can the State of Texas transfer or assign a lien based on unpaid wages to the wage claimant, so the claimant might pursue collection efforts on his own?"
2. "Is a wage claimant for whose use and benefit the State of Texas holds a lien precluded from pursuing statutory and common-law remedies to get execution on that lien because it was created in the name of the State?"

Our previous discussions with your office regarding the acknowledged difficulty, if not the real impossibility, of collection action on all wage claim orders by the Attorney General lead us to the questions posed above.

Article 5155, Sec. 6(a), V.A.T.S. states, "The entry of a final administrative order against an employer, unless timely appealed to a court, becomes a lien on all the property, both real and personal, belonging to the employer so indebted to the state for penalties or wages." (Emphasis added.) The statute has explicit language prescribing the agency's role when wage payments are made to the agency; those wages are to be remitted to the wage claimant, along with any earned interest. However, until payment is made by the employer, the State stands in the position of creditor and, hopefully, recipient of funds (unpaid wages) for the use and benefit of the wage claimant.

The Statute, though, does not specifically grant to the wage claimant any status as a lienholder, thus denying the claimant an opportunity to attempt collection of the wages secured by the lien through action on his own. Although the administrative liens presently being filed by the Texas Employment Commission identify the wage claimant whose claim occasioned the final

THE HONORABLE DAN MORALES
RE: A.G. Opinion (Art. 5155 V.A.T.S.)
June 19, 1992

Page Two of Two

determination and order of the Commission, as well as the amount of wages due, the liens are filed in the name of the State of Texas.

We would appreciate an early answer to these questions. If further information is needed, please contact Edgar L. Berlin at 795-6610. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Ed Davis".

C. Ed Davis
Deputy Administrator for Legal Affairs

CED:elb:kam